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266 NLRB No. 163

D--9889
New York, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PARIS MODE HANDBAGS CORP.

and

Case 2--CA--18900

LEATHER GOODS, PLASTICS,
HANDBAGS & NOVELTY WORKERS
UNION, LOCAL ONE, AFFILIATED
WITH THE INTERNATIONAL
LEATHER GOODS, PLASTICS AND
NOVELTY WORKERS UNION,
AFL--CIO

DECISION AND ORDER

Upon a charge filed on 30 June 1982, by Leather Goods, Plastics, Handbags & Novelty Workers Union, Local One, affiliated with the International Leather Goods, Plastics and Novelty Workers Union, AFL--CIO, herein the Charging Party, and duly served on Paris Mode Handbags Corp., herein Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 2, issued a complaint and notice of hearing on 10 August 1982 against Respondent. The complaint alleges that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint

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and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that, commencing on or about 1 January 1982, Respondent has refused and continues to fail and refuse to comply with the terms of the current collective-bargaining agreement between it and the Charging Party by (1) failing and refusing to make payments to the Insurance Trust Fund and the Joint Retirement Fund on behalf of its employees in the appropriate unit; (2) failing and refusing to obtain life insurance coverage and Blue Cross and Blue Shield hospitalization and medical coverage on behalf of its employees in the appropriate unit; (3) failing and refusing to deduct union dues and remit them to the Charging Party; and (4) failing and refusing to abide by said collective-bargaining agreement's grievance and arbitration clause. The complaint also alleges that Respondent, acting by and through its president, Michael Goldstein, (1) in or about March 1982 interrogated its employees about their membership in, activities on behalf of, and support for the Charging Party and bypassed the Charging Party to deal directly with its employees by promising them the same holiday and vacations as those negotiated by the Charging Party if they abandoned the Charging Party as their collective-bargaining agent; (2) on or about 19 April 1982 warned and advised its employees that it would no longer recognize the Charging Party as their collective-bargaining agent and that it would no longer abide by the terms and conditions of employment set forth in its collective-

bargaining agreement with the Charging Party; and (3) in or about the months of June and July 1982 threatened its employees with discharge and plant closure if they continued to join, support, or assist the Charging Party. Respondent did not file an answer to the complaint.

On 4 February 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 9 February 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and therefore the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically stated that unless Respondent filed an answer to the complaint within 10 days of the complaint's service ''all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, according to the uncontroverted allegations of the Motion for Summary Judgment, on 3 December 1982 and on 11 January 1983 counsel for the General Counsel had conversations with Respondent's president, Goldstein. Counsel for the General Counsel informed Goldstein on each occasion that, because of Respondent's failure to answer the complaint, counsel for the General Counsel would file a Motion for Summary Judgment. Nonetheless, Respondent has not filed any answer to the complaint.

On 4 February 1983 counsel for the General Counsel filed with the Board in Washington, D.C., a Motion for Summary Judgment. On 9 February 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause by 23 February 1983 why the Board should not grant counsel for the General Counsel's Motion for Summary Judgment. Respondent did not reply to the Notice To Show Cause.

Accordingly, under the rule set forth above, Respondent having shown no good cause for its failure to file an answer, we deem the allegations of the complaint to be admitted and we find them to be true and we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent Paris Mode Handbags Corp. is a New York corporation with an office and place of business at 11 West 30th Street, New York, New York. At all times material to this proceeding, Respondent has been engaged in the manufacture, assembly, and nonretail sale and distribution of handbags and related products. Annually, Respondent, in the course and conduct of its business operations, sells and ships from its facility products, goods, and materials valued in excess of \$50,000 directly to firms located outside the State of New York.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material to this proceeding, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this case.

II. The Labor Organization Involved

The Charging Party, Leather Goods, Plastics, Handbags & Novelty Workers Union, Local One, affiliated with the International Leather Goods, Plastics and Novelty Workers Union, AFL--CIO, is, and has been at all times material to this proceeding, a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

Since in or about 1962, the Charging Party has been designated the exclusive collective-bargaining representative for the following employees of Respondent:

All full-time and regular part-time production, manufacturing, shipping, receiving and maintenance employees employed by Respondent at its 11 West 30th Street facility, New York, New York, excluding all other employees, guards and supervisors as defined in the Act.

Since in or about 1962, Respondent has recognized the Charging Party as the exclusive representative of its employees in the above-described unit and such recognition has been embodied in a series of collective-bargaining agreements, the most recent of which is effective by its terms for the period 25 April 1981 to 25 April 1984. This current collective-bargaining agreement provides, inter alia, that Respondent shall make payments on behalf of unit employees to the Insurance Trust Fund, administered by the Union Labor Life Insurance Co.; make payments on behalf of unit employees to the Joint Retirement Fund, Pocketbook and Novelty Workers Union, New York; obtain a certain level of Blue Cross and Blue Shield hospitalization and medical coverage for unit employees; obtain life insurance coverage in the amount of \$1,500 for each unit employee; deduct union dues pursuant to duly executed authorization forms and remit the dues to the Charging Party; and settle all claims, disputes, and differences between it and the Charging Party pursuant to a grievance and arbitration clause. Since on or about 1 January 1982 Respondent has failed and refused, and continues to fail and refuse, to abide by each of the above-outlined provisions of the

current collective-bargaining agreement. By these actions, Respondent has repudiated the current collective-bargaining agreement and withdrawn recognition from the Charging Party. Accordingly, we find that, by the conduct described above, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

At all times material herein, Michael Goldstein has been, and is, Respondent's president and has been, and is, its agent, acting on its behalf. In or about March 1982, Michael Goldstein interrogated employees about their membership in, activities on behalf of, and sympathies for the Charging Party and bypassed the Charging Party and dealt directly with employees by promising employees the same holidays and vacations negotiated by the Charging Party if they abandoned the Union as their collective-bargaining agent. On or about 29 April 1982 Michael Goldstein warned and advised employees that Respondent would no longer recognize the Charging Party as their exclusive collective-bargaining agent and that Respondent would no longer abide by the terms and conditions of employment set forth in its collective-bargaining agreement with the Charging Party. In or about the months of June and July 1982 Michael Goldstein threatened employees with discharge and plant closure if they continued to join, support, or assist the Charging Party. We find that, by the conduct described in this paragraph, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

To remedy Respondent's violations of Section 8(a)(1) we shall order it to cease and desist from (1) interrogating employees about their union support and sympathies; (2) bypassing the Charging Party and dealing directly with its employees by promising them equivalent benefits if they abandon the Charging Party as their bargaining agent; (3) warning and advising employees that it will no longer recognize the Charging Party as their bargaining agent and that it will no longer abide by the terms and conditions of employment contained in its agreement with the Charging Party; and (4) threatening its employees with discharge or plant closure if they continue to join, support, or assist the Charging Party.

To remedy Respondent's violations of Section 8(a)(5) and (1) we shall order it to cease and desist from failing and refusing

to comply with the various provisions of the collective-bargaining agreement in effect between it and the Charging Party.

We shall further order that Respondent pay to the Insurance Trust Fund and the Joint Retirement Fund the contributions which it should have made pursuant to the terms of the collective-bargaining agreement retroactive to 1 January 1982, and to obtain life insurance and Blue Cross and Blue Shield hospitalization and medical coverage for its employees retroactive to 1 January 1982.¹

We shall also order Respondent to reimburse employees for any losses they may have incurred as a result of Respondent's unlawful failure to pay the aforementioned contributions and obtain the aforementioned benefits.

Finally, we shall order Respondent to reimburse the Charging Party for all dues which Respondent failed, since 1 January 1982, to deduct from the employees' paychecks and transmit to the Charging Party as required by the collective-bargaining

¹ Because the provisions of employee benefit funds are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether Respondent Paris Mode Handbags Corp. must pay any additional amounts into the benefit funds in order to satisfy our "'make whole'" remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. Merryweather Optical Company, 240 NLRB 1213, 1216, fn. 7 (1979).

agreement, insofar as the Union has not obtained such dues directly from employees.² Ortiz Funeral Home Corp., 250 NLRB 730, 731 (1980).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Respondent Paris Mode Handbags Corp. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Charging Party, Leather Goods, Plastics, Handbags & Novelty Workers Union, Local One, affiliated with the International Leather Goods, Plastics and Novelty Workers Union, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, manufacturing, shipping, receiving and maintenance employees employed by Respondent at its 11 West 30th Street facility, New York, New York, excluding all other employees, guards and supervisors as defined in the Act.

4. At all times material to this proceeding, the Charging Party has been the exclusive bargaining representative of the employees in the aforesaid unit within the meaning of Section 9(a) of the Act.

² Interest on any dues or other reimbursements shall be paid in the manner prescribed in Florida Steel Corporation, 231 NLRB 651 (1977). See, generally, Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

5. Respondent and the Charging Party have been parties to a series of collective-bargaining agreements, the most recent of which is effective by its terms from 25 April 1981 to 25 April 1984.

6. Since 1 January 1982, Respondent has failed and refused, and is failing and refusing, to comply with the terms of the current collective-bargaining agreement mentioned in paragraph 5 above by failing and refusing to make payments on behalf of its employees to the Insurance Trust Fund and Joint Retirement Fund; failing and refusing to obtain life insurance coverage and Blue Cross and Blue Shield hospitalization and medical coverage for its employees; failing and refusing to deduct union dues and remit them to the Charging Party; and failing and refusing to abide by the grievance and arbitration clause in said collective-bargaining agreement.

7. In or about March 1982 Respondent, acting by and through its president and agent, Michael Goldstein, interrogated employees about their union sympathies and activities and bypassed the Charging Party to deal directly with its employees by promising employees equivalent benefits if they abandoned the Charging Party as their bargaining agent; on or about 19 April 1982 Respondent, acting by and through its president and agent, Michael Goldstein, warned and advised its employees that it would no longer recognize the Charging Party as their bargaining agent and would no longer abide by the terms of its agreement with the Charging Party; and in or about the months of June and July 1982, Respondent, acting by and through its president and agent,

Michael Goldstein, threatened employees with discharge and plant closure if they continued to join, support, or assist the Charging Party.

8. By the acts outlined in paragraph 6 above, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

9. By the acts outlined in paragraph 7 above, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

10. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Paris Mode Handbags Corp., New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees about their membership in, activities on behalf of, and support for Leather Goods, Plastics, Handbags & Novelty Workers Union, Local One, affiliated with the International Leather Goods, Plastics and Novelty Workers Union, AFL--CIO.

(b) Bypassing the Union and dealing directly with its employees by promising them the same holidays and vacations as those negotiated by the Union if they abandon the Union as their collective-bargaining agent.

(c) Warning and advising its employees that it will no longer recognize the Union as their collective-bargaining agent and will no longer abide by the terms and conditions of employment set forth in its collective-bargaining agreement with the Union.

(d) Threatening its employees with discharge and plant closure if they continue to join, support, or assist the Union.

(e) Failing and refusing to make its contractually required payments to the Insurance Trust Fund and the Joint Retirement Fund.

(f) Failing and refusing to obtain contractually required life insurance coverage and Blue Cross and Blue Shield hospitalization and medical coverage for its employees.

(g) Failing and refusing to deduct dues and remit them to the Union.

(h) Failing and refusing to abide by the grievance and arbitration provisions of its collective-bargaining agreement with the Union.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative actions which the Board finds will effectuate the policies of the Act:

(a) Recognize the Union as the exclusive bargaining representative for all full-time and regular part-time production, manufacturing, shipping, receiving and maintenance

employees at its 11 West 30th Street facility excluding all other employees, guards, and supervisors as defined in the Act.

(b) Abide by and implement its current collective-bargaining agreement with the Union, including its grievance and arbitration clause.

(c) Pay contributions to the Insurance Trust Fund and the Joint Retirement Fund retroactive to 1 January 1982, and obtain life insurance coverage and Blue Cross and Blue Shield hospitalization and medical coverage retroactive to 1 January 1982, in the manner set forth in the section of this Decision entitled "'The Remedy.'"

(d) Reimburse, with interest, employees for any losses they may have incurred as a result of Respondent's unlawful failure to pay the aforementioned contributions and to obtain the aforementioned benefits.

(e) Reimburse, with interest, the Union for all membership dues which it failed to deduct since 1 January 1982, from its employees' paychecks and failed to remit to the Union, insofar as the Union has not obtained such dues directly from employees.

(f) Post at its office in New York, New York, copies of the attached notice marked "'Appendix.'"³ Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

1 June 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT interrogate our employees about their membership in, activities on behalf of, and support for Leather Goods, Plastics, Handbags & Novelty Workers Union, Local One, affiliated with the International Leather Goods, Plastics & Novelty Workers Union, AFL--CIO.

WE WILL NOT bypass the Union and deal directly with our employees by promising the same holidays and vacations as those negotiated by the Union if they abandon the Union as their collective-bargaining agent.

WE WILL NOT warn and advise our employees that we will no longer recognize the Union as their collective-bargaining agent and will no longer abide by the terms and conditions of employment set forth in our collective-bargaining agreement with the Union.

WE WILL NOT threaten our employees with discharge and plant closure if they continue to join, support, or assist the Union.

WE WILL NOT fail and refuse to make our contractually required payments to the Insurance Trust Fund and the Joint Retirement Fund.

WE WILL NOT fail and refuse to obtain contractually required life insurance coverage and Blue Cross and Blue Shield hospitalization and medical coverage for our employees.

WE WILL NOT fail and refuse to deduct dues and remit them to the Union.

WE WILL NOT fail and refuse to abide by the grievance and arbitration provisions of our collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL recognize the Union as the exclusive bargaining representative for all full-time and regular part-time production, manufacturing, shipping, receiving, and maintenance employees at our 11 West 30th Street facility, excluding all other employees, guards and supervisors as defined in the Act.

WE WILL abide by and implement all of the provisions of our current collective-bargaining agreement with the Union, including its grievance and arbitration provisions.

WE WILL pay our contractually required contributions to the Insurance Trust Fund and the Joint Retirement Fund, retroactive to 1 January 1982.

WE WILL obtain the contractually required life insurance coverage and Blue Cross and Blue Shield hospitalization and medical coverage, retroactive to 1 January 1982, for our employees.

WE WILL reimburse, with interest, our employees for any losses they may have incurred as a result of our failure to pay the above-mentioned contributions and to obtain the above-mentioned benefits.

WE WILL reimburse, with interest, the Union for all membership dues which we failed to deduct since 1 January 1982 from our employees' paychecks and which we failed to remit to the Union, insofar as the Union has not obtained such dues directly from employees.

PARIS MODE HANDBAGS CORP.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Jacob K. Javits Federal Building, Room 3614, 26 Federal Plaza, New York, New York 10278, Telephone 212--264--0360.